

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10908 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BM KARANGIA

Versus

GOVT OF GUJARAT & 2

Appearance:

MR JD AJMERA for Petitioner

SERVED BY AFFIXING for Respondent No. 1

MR DA BAMBHANIA for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER

Date of decision: 17/04/97

ORAL JUDGEMENT (PER C.K.THAKKER J.)

1. This petition is filed by the petitioner for an appropriate writ, direction and/or order, quashing and setting aside an order of termination passed against the

petitioner and to reinstate him with all consequential benefits.

2. The case of the petitioner is that he joined as Junior Clerk with respondents on August 1984. On 10th October 1985, he was posted in the office of the Regional Forest Officer at Khambha, District Amreli respondent no.3 herein. In accordance with the Rules in force, the petitioner was required to clear pre-service training examination within specified chances and specified period. It is the case of the petitioner that in 1985, he appeared at the departmental examination, but he failed. In 1986, again he appeared but he was declared failed in one paper of Finance Rules. According to him, he was required to get 50 marks. He could, however, obtain only 42 marks. The petitioner claims that he would have obtained more marks and would not have failed in the examination and hence he made an application for re-checking of one paper on September 10, 1987 by paying an amount of Rs.10/- for re-checking of paper no.3. For the said purpose, the petitioner claims to have addressed a letter to the Commissioner and Directorate of Sardar Patel State Administrative Bhavan, Ahmedabad, through proper channel. He also sent Rs.10/- by a demand draft. The petitioner has stated in the petition that till the date the petition was filed i.e. September 12, 1994, he was not given any reply one way or the other. On November 17, 1987, the petitioner requested the respondents to permit him to appear at the departmental examination for third trial. The said application was made to the Deputy Collector, Pre-Service Training Centre, Bhavnagar, which is annexed at Annexure.B and looking to the endorsement made by the authorities, a recommendation was made to permit the petitioner at the said examination. The application, however, came to be rejected by the authorities on January 8, 1988, inter alia, on the ground that result was declared of 1986 examination on July 17, 1987, September 1987 and November-December 1987, examinations were held, and the petitioner had not appeared at the said examinations. it was, therefore, treated as chance and since the petitioner was not entitled to fourth chance, the application could not be granted. Thereafter again, various applications came to be made and they were rejected on the ground that the petitioner had completed all the chances.

When the matter came up for hearing, rule was issued (Coram: M.R.Calla J.) and interim relief was also granted. When the matter was posted for final hearing before me, I passed the order that the respondents to

file affidavit on or before a particular date. Pursuant to which reply is filed by G.Yadaiah, IFS Dy. Conservator of Forest. In para 4 it is stated;

" Before dealing with contentions of the petition, deponent crave leave to submit the following facts for the Hon'ble Court kind contention.

(A) The petitioner was required to pass departmental examination with the specified chances as per the terms of appointment and for continuation on temporary establishment of the Government. The petitioner appeared in the ensuing examination after the training however petitioner failed in the said examination. The petitioner was given the second chance to appear in the examination and again petitioner failed in the said examination. It is submitted that the 3rd chance was also made available to the petitioner as he was conveyed for complying the necessary procedure however the petitioner did not care to appear and/or avail of the 3rd chance. It is further submitted that for next examination also petitioner did not avail of the chances and accordingly as per normal rules petitioner did not clear the departmental examination within three chances and even within four chances which were made available to appear at the said examination.

(B) As per norms settled, if the candidate failed to pass preserves training examination with the specified chances his services are required to be brought an end to an even for the purpose of appearing at the grace chance he has to remain at home."

I have heard Mr.J.D.Ajmera, learned counsel for the petitioner and Mr.Bambhania, learned AGP for the respondents.

Mr.Ajmera, submitted that the petitioner was entitled to third chance as neither in fact nor in law, it can be said that he had appeared and failed thrice in the examination. He submitted that in 1985, undoubtedly

the petitioner appeared and failed in the examination. He cannot make any grievance against that failure. So far as the second chance is concerned, the petitioner appeared and failed in 1986 examination, but he was of the opinion that he had fared well and would not have failed in the examination and hence through proper channel he made an application by submitting demand draft of Rs.10/-. It was, therefore, expected of the authority to decide that application one way or the other, but it was not done. Mr.Ajmera made a statement at the bar that even to day the petitioner has not been informed about the disposal of the said application made by him for re-checking. Be that as it may, the fact remains that thereafter the petitioner made an application to permit him to appear at third examination. The application was received and was forwarded. Recommendation was also made in 1987. The petitioner was not informed one way or the other about the said examination. In January 1988, the petitioner was informed by the authority that since the examinations were taken in September and November-December 1987, it was to be treated as chance and as the petitioner failed to appear his prayer could not be granted. Now, there is nothing on the record nor in the affidavit-in-reply that the petitioner was permitted to appear and yet the petitioner did not appear. In these circumstances, obviously the petitioner cannot suffer. Hence, even if the submission of Mr.Bambhania is accepted that in the second chance the petitioner appeared and failed, submission of Mr.Ajmera is well founded and must be accepted that the petitioner was entitled to third chance. Since the petitioner has right to appear, he was deprived of that chance. Therefore, to that extent, grievance of the petitioner is well founded.

For the foregoing reasons, the petition is allowed. The impugned order of termination is quashed and set aside. The respondent authorities will permit the petitioner to appear at the third chance at the ensuing examination to be held in or after June 1997 or thereafter. Rule is made absolute to that extent with no order as to costs.
